

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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FRANK DISPENZA,

Plaintiff,

v.

ORDER  
12-CV-458A

TOWN OF TONAWANDA,

Defendant.

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The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1)(B). On January 6, 2014, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that the action be dismissed, without prejudice to re-filing upon receipt of the New York State Retirement System's decision concerning plaintiff's application for disability retirement benefits, in which case any statute of limitations defense which might arise between the date this action is discontinued and the date the subsequent action is commenced will not be applicable.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, the action is dismissed, without prejudice to re-filing upon receipt of the New York State Retirement System's decision concerning plaintiff's application for disability retirement benefits, in

which case any statute of limitations defense which might arise between the date this action is discontinued and the date the subsequent action is commenced will not be applicable.

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

*s/ Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT JUDGE

DATED: January 24, 2014